



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

DEC 10 2008

Laurence E. Gold
Lichtman, Trister & Ross
1666 Connecticut Avenue, N.W.
Fifth Floor
Washington, D.C. 20009

RE: MUR 5970
They Work For Us, Inc.

Dear Mr. Gold:

On February 5, 2008, the Federal Election Commission notified your client, They Work For Us, Inc. ("TWFU"), of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). On October 22, 2008, the Commission found, on the basis of the information in the complaint, and information provided by you, that there is no reason to believe TWFU violated 2 U.S.C. § 441a(a)(1). Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). The Factual and Legal Analysis, which explains the Commission's findings, is enclosed for your information.

If you have any questions, please contact Elena Paoli, the attorney assigned to this matter at (202) 694-1548.

Sincerely,

A handwritten signature in black ink that reads "Julie K. McConnell/ejp".

Julie K. McConnell
Assistant General Counsel

Enclosure
Factual and Legal Analysis

29044223025

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: They Work For Us, Inc.

MUR: 5970

I. INTRODUCTION

This matter was generated by a complaint filed with the Federal Election Commission by Lori Sherwood. See 2 U.S.C. § 437g(a)(1).

II. FACTUAL AND LEGAL ANALYSIS

The complaint alleges that They Work For Us ("TWFU") "apparently facilitated placement of political ads in conjunction with SEIU [Service Employees International Union]." The complaint further alleges that TWFU has become a conduit for campaign contributions and an alleged 501(c)(4) "lobbying wing," and that Donna Edwards for Congress ("Committee") coordinated with TWFU.

TWFU is a nonprofit, social welfare organization that promotes public awareness of votes and other actions by Congressional members. TWFU states that Donna Edwards is on the Board of Directors of TWFU. She recused herself from TWFU Board discussions regarding the race in Maryland District 4 since shortly after she announced her candidacy in April 2007. She took a leave of absence from her position as director of TWFU in August 2007. TWFU states that it never made a monetary contribution or provided any goods, services, or any other thing of value to the Edwards campaign.

It appears that TWFU did, however, fund a radio broadcast that referred to Edwards' opponent shortly before the February 2008 Primary. See TWFU Response to the Reports

**1 Analysis Division, May 22, 2008. TWFU filed a Form 9 with the Commission to disclose this
2 Electioneering Communication (albeit late). We have not been able to obtain a copy of the radio
3 ad.**

**4 The Act, as amended by BCRA, provides that no person shall make contributions to any
5 candidate and his or her authorized political committee with respect to any election for federal
6 office, which, in the aggregate, exceed \$2,300. 2 U.S.C. § 441a(a)(1)(A).**

**7 Under the Act and Commission regulations, the terms "contribution" and "expenditure"
8 include any gift of money or "anything of value" made by any person for the purpose of
9 influencing a Federal election. See 2 U.S.C. §§ 431(8)(A)(i) and (9)(A)(i); 11 C.F.R. §§
10 100.52(a) and 100.111(a). The phrase "anything of value" includes all in-kind contributions. See
11 11 C.F.R. §§ 100.52(d)(1) and 100.111(e)(1). In-kind contributions include expenditures made
12 by any person "in cooperation, consultation, or concert, with, or at the request or suggestion of" a
13 candidate, a candidate's authorized committees, or their agents. 2 U.S.C. § 441a(a)(7)(B)(i).**

**14 Commission regulations specify a three-prong test to determine whether a payment for a
15 communication becomes an in-kind contribution as a result of coordination between the person
16 making the payment and a candidate. See 11 C.F.R. § 109.21(a)(1)-(3). Under the first prong of
17 the coordinated communication test, the communication must be paid for by a person other than
18 a candidate, a candidate's authorized committee, a political party committee, or agents of any of
19 the foregoing. See 11 C.F.R. § 109.21(a)(1). Under the second prong, the communication must**

1 satisfy one of the four content standards set forth in 11 C.F.R. § 109.21(c).¹ Under the third
2 prong, the communication must satisfy one of the five conduct standards set forth in 11 C.F.R.
3 § 109.21(d).²

4 The vague allegation that TWFU worked with SEIU, another non-profit organization,
5 does not constitute coordination. See 11 C.F.R. § 109.21(a). TWFU states that it never provided
6 anything of value to the Edwards campaign and that no one at TWFU had any contacts with her
7 or her campaign since April 2007.

8 Moreover, based on the facts alleged and the response, there is no information that the
9 conduct standard of the coordination regulations has been satisfied, as the radio ads aired in early
10 2008 and the last communications between TWFU and Edwards appear to have been in early to
11 mid-2007. Therefore, there is no reason to believe that TWFU violated 2 U.S.C. § 441a(a)(1) by
12 making an excessive in-kind contribution in the form of a coordinated communication.

¹ After the decision in *Shays v. FEC*, 414 F.3d 76 (D.C. Cir. 2005) (Court of Appeals affirmed the District Court's invalidation of the fourth, or "public communication," content standard of the coordinated communications regulation), the Commission made revisions to 11 C.F.R. § 109.21 that became effective July 10, 2006. In a subsequent challenge by Shays, the U.S. District Court for the District of Columbia held that the Commission's content and conduct standards of the coordinated communications regulation at 11 C.F.R. § 109.21(c) and (d) violated the Administrative Procedure Act; however, the court did not vacate the regulations or enjoin the Commission from enforcing them. See *Shays v. FEC*, 508 F.Supp.2d 10, 70-71 (D.D.C. Sept. 12, 2007) (NO. CIV.A. 06-1247 (CKK)) (granting in part and denying part the respective parties' motions for summary judgment). Recently, the D.C. Circuit affirmed the district court with respect to, *inter alia*, the content standard for public communications made before the time frames specified in the standard, and the rule for when former campaign employees and common vendors may share material information with other persons who finance public communications. See *Shays v. FEC*, ___ F.3d ___, (D.C. Cir. 2008).

² The conduct prong is satisfied where any of the following types of conduct occurs: (1) the communication was created, produced or distributed at the request or suggestion of a candidate or his campaign; (2) the candidate or his campaign was materially involved in decisions regarding the communication; (3) the communication was created, produced, or distributed after substantial discussions with the campaign or its agents; (4) the parties contracted with or employed a common vendor that used or conveyed material information about the campaign's plans, projects, activities or needs, or used material information gained from past work with the candidate to create, produce, or distribute the communication; (5) the payor employed a former employee or independent contractor of the candidate who used or conveyed material information about the campaign's plans, projects, activities or needs, or used material information gained from past work with the candidate to create, produce, or distribute the communication; or (6) the payor republished campaign material. See 11 C.F.R. § 109.21(d).